

1           **MICHAEL W. DOTTS, Esq. - # F0150 (NMI)**  
2           **O'Connor Berman Dotts & Banes**  
3           **Second Floor, Nauru Building**  
4           **P.O. Box 501969**  
5           **Saipan, MP 96950**  
6           **Telephone No. (670) 234-5684**  
7           **Facsimile No. (670) 234-5683**

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9           *Attorneys for the Defendant*

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11           **IN THE UNITED STATES DISTRICT COURT**  
12           **FOR THE**  
13           **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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15           **TRANS PACIFIC EXPORT    ) CIVIL ACTION NO. 05-0032**  
16           **COMPANY LLC,    )**  
17           **Plaintiff,    )**  
18           **vs.    ) SUBPOENA DUCES TECUM**  
19           **MARY ANN S. MILNE,                                        )**  
20           **Defendant.    )**  
21           **)**

22  
23           **TO: CUSTODIAN OF RECORDS**  
24           **BANK OF GUAM**  
25           **GARAPAN, SAIPAN**

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27           **YOU ARE HEREBY COMMANDED**, pursuant to Rule 45, Federal Rules of Civil  
28           Procedure, to produce and permit inspection and copying of the designated books, records and  
materials in your possession, custody or control as follows:

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30           All records and documents concerning the loan or loans or credit lines that  
31           Basic Construction Inc. obtained from the Bank of Guam, including, but  
32           not limited to, loan applications, financial statements, appraisal reports,  
33           accounting records, corporate records, promissory notes, mortgages, and  
34           UCC 1 filings placed on inventory.

1           Please produce the originals at the Law Offices of O'Connor Berman Dotts and Banes,  
2 Second Floor, Nauru Building, Susupe, Saipan, Commonwealth of the Northern Mariana  
3 Islands on September 14, 2006 during regular business hours.

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5           Pursuant to Federal Rules of Civil Procedure 45 (a) (1) (d) the text of subdivisions(c)  
6 and (d) is included herein and reads as follows:

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8           **A. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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10          1. A party or an attorney responsible for the issuance of service of a subpoena shall take  
11 reasonable steps to avoid imposing undue burden or expense on a person subject to that  
12 subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and  
13 impose the party or attorney in breach of this duty an appropriate sanction, which may include,  
14 but is not limited to lost earnings and a reasonable attorneys' fee.

15

16          2. (A) A person commanded to produce and permit inspection and copying of  
17 designated books, papers, documents or tangible things, or inspection of premises need not  
18 appear in person at the place of production or inspection unless commanded to appear for  
19 deposition, hearing or trial.

20

21           (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and  
22 permit inspection and copying may, within 14 days after service of the subpoena or before the  
23 time specified for compliance if such time is less than 14 days after service, serve upon the

1 party or attorney designated in the subpoena written objection to inspection or copying of any  
2 or all of the designated materials or of the premises. If objection is made, the party serving the  
3 subpoena shall not be entitled to inspect and copy the materials or inspect the premises except  
4 pursuant to an order of the court by which the subpoena was issued. If objection has been  
5 made, the party serving the subpoena may, upon notice to the person commanded to produce,  
6 move at any time for an order to compel the production. Such an order to compel production  
7 shall protect any person who is not a party or an officer of a party from significant expense  
8 resulting from the inspection and copying commanded.

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11 3 (A) On timely motion, the court by which a subpoena was issued shall quash or  
12 modify the subpoena if it:

- 13 i. fails to allow reasonable time for compliance; or  
14 ii. requires a person who is not a party or an officer of a party to travel to a  
15 place more than 100 miles from the place where that person resides, is  
16 employed or regularly transacts business in person, except that, subject  
17 to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may  
18 in order to attend trial be commanded to travel from any such place  
19 within the state in which the trial is held, or  
20 iii. requires disclosure of privileged or other protected matter and no  
21 exception or waiver applies; or  
22 iv. subjects a person to undue burden.

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24 (B) If a subpoena  
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- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## B. DUTIES IN RESPONDING TO SUBPOENA

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall

1 be supported by a description of the nature of the documents, communications, or things not  
2 produce that is sufficient to enable the demanding party to contest the claim.  
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4 **C. CONTEMPT**  
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6 Failure by any person without adequate excuse to obey a subpoena served upon that  
7 person may be deemed a contempt of the court from which the subpoena issued.  
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10 Dated this 5<sup>th</sup> day of September, 2006

11  
12 O'Connor Berman Dotts & Banes  
13 Attorney for Mary Ann S. Milne  
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15 By: \_\_\_\_\_/s/  
16 Michael W. Dotts (F0150)  
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